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No.

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MICHAEL RODAK, JR.,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

CONFEDERATION LIFE INSURANCE COMPANY,
Petitioner,

v.

HECTOR DE LARA, ET AL.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Petitioner, Confederation Life Insurance Company,[1] prays that a writ of certiorari be issued to review the decision of the Supreme Court of Florida entered in this case.

OPINIONS BELOW

The unreported opinion of the trial court, the Circuit Court for the Eleventh Judicial Circuit of Florida, appears at p. 1a, *infra*. The opinion of the District

[1] Petitioner, styled Confederation Life Association in the courts below, has undergone a change of name and the caption of this petition reflects that change. Petitioner continues to be a mutual insurance company.

Court of Appeal of Florida for the Third District, which is reported at 244 So.2d 539, appears at p. 5a, *infra*. The opinion of the Supreme Court of Florida, which is reported at 257 So.2d 42, appears at p. 7a, *infra*.

JURISDICTION

The opinion of the Supreme Court of Florida was entered on December 1, 1971, and constitutes the judgment of that court. A timely petition for rehearing was denied by that court on February 15, 1971, by an order which appears at p. 11a, *infra*. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3) (1970).

QUESTIONS PRESENTED

1. Whether Florida has violated the Due Process Clause of the Fourteenth Amendment by applying its own local law to enlarge contractual obligations of a foreign company under an insurance contract made in Cuba, covered by reserves located in Cuba, performable by its express terms in Cuba, and insuring the life of a Cuban domiciliary who resided and died in Cuba.

2. Whether Florida has transgressed international law and thus infringed the authority of the Federal Government over foreign affairs by applying local law to a wholly foreign transaction with which Florida has no connection.

3. Whether by disregarding the effect of Cuban currency legislation governing a Cuban contract Florida has acted inconsistently with the act of state doctrine, which this Court has held to be binding in both state and federal judicial proceedings.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the provision of the Fourteenth Amendment of the United States Constitution providing that no state shall "deprive any person of . . . property, without due process of law" and the constitutional authority of the Federal Government over foreign affairs.

STATEMENT

The court below, in direct conflict with decisions of this Court, has impermissibly applied local state law to alter drastically obligations established by foreign law pursuant to a foreign contract between foreign nationals. Unless corrected, the lower court's decision will involve the United States in a breach of international law, result in millions of dollars of unjustified losses to the petitioner and other companies comparably situated, and subject the companies and their employees to sanctions under foreign law.

A. *Factual Background.* For many years prior to 1951, Cuba maintained a highly unusual "dual currency" regime (A. 16, 46-47).[2] Under Cuban law during this period, the United States dollar constituted legal tender in Cuba alongside the Cuban peso (*id.*). Consequently, contracts written in Cuba at this time often specified dollars as the domestic Cuban currency of payment (A. 46).

Petitioner, Confederation Life Insurance Company ("Confederation"), is a Canadian mutual insurance

[2] References designated "A.—" are to the separate appendix filed in the Supreme Court of Florida, containing pertinent extracts from the record. A copy of the separate appendix has been lodged with the Clerk of this Court. References designated "Tr. —" are to the transcript of testimony in the Florida Circuit Court.

company which for many years has provided life insurance in countries throughout the world including Cuba and the United States. In 1938, Confederation, through its Havana office, issued a life insurance policy to German Lopez Sanchez, a Cuban citizen who then resided in Cuba and continued to reside there until his death in 1962 (A. 46, 59). Both Sanchez' application and the policy itself were written in Spanish (A. 59) and the terms of the policy conformed fully with Cuban law, which is the law to which Confederation expected to look in determining rights and obligations under the policy (Tr. 75).

The contract of insurance between Confederation and Sanchez was made in Cuba. Sanchez' application was executed in Cuba (A. 37). The policy was not valid until notarized in Cuba and notarization took place there (Tr. 55-56, 72). Moreover, by the express terms of the application (A. 36), the policy became effective only on its delivery and on payment of the first premium (A. 46), and both of these events occurred in Cuba through Confederation's Havana office (*id.*).[3] The insurance contract was not only made in Cuba but it expressly provided that Cuba was the place of performance of Confederation's obligations:

> "PLACES OF PAYMENT.—All sums payable or exigible [demandable] under this policy shall be

[3] The trial court's findings and conclusions contain the statement that "the place of making of the contract was Toronto, Canada" (p. 3a, *infra*), but the record is devoid of support for this assertion and uncontroverted testimony and documentary evidence show that the contract was made in Cuba (A. 36-37, 46). It appears that the findings and conclusions were drafted by counsel for the claimants in the trial court, and, in any event, an inaccurate legal label cannot alter the record facts or insulate the decision from scrutiny here to protect federal constitutional rights. *E.g.*, *Niemotko* v. *Maryland*, 340 U.S. 268, 271 (1951).

paid at the principal office of the Association in the city of Havana, Republic of Cuba, but the insured may, with the assent of the Association, make his payments elsewhere" (A. 29).

As was true of many of Confederation's policies under Cuba's pre-1951 dual currency regime, the Sanchez policy provided that payments under the policy should be made "in lawful currency of the United States of America" (A. 29), which was then one of Cuba's two currencies of legal tender status. On June 30, 1951, however, Cuba withdrew the legal tender status of the dollar and provided that all previously contracted dollar obligations payable in Cuba would be payable at the rate of one peso per dollar (A. 16-17, 46-47). This legislation, representing a traditional act of state with familiar precedents in this country (see p. 21, *infra*), converted the Sanchez policy from one payable in dollars to one payable in an equivalent number of pesos (A. 57).

In the next premium notice after June 30, 1951, Confederation notified its policyholders that, in accordance with the legislation, all premiums and all company obligations stated in policies in dollars "will from now on be payable in Cuban national currency at par" (A. 47). Sanchez did not terminate his policy but continued to pay premiums on it, and his premiums were thereafter paid entirely in pesos (A. 48). Both before and after that date all of Sanchez' premium payments were made in Cuba (*id.*).

The Government of Cuba was overthrown in January 1959 and a new Cuban Government under Fidel Castro was installed. Shortly thereafter, the United States recognized the Castro regime as the legitimate govern-

ment of that country and that recognition continues in effect today. By legislation in October 1959 and February 1961, the new Cuban Government reconfirmed and reinforced the 1951 legislation.[4] Based on the uncontroverted sworn testimony of the expert witness on Cuban law—a former Justice of the Supreme Court of Cuba who was stipulated to be "a recognized authority on Cuban law" (Tr. 35)—the Cuban legislation prohibits payment of the Sanchez policy by Confederation in any currency other than pesos and in any place other than Cuba; and it provides for severe criminal sanctions in the event of violations (A. 57).

Since 1951 Confederation has maintained in that country peso reserves sufficient to cover its obligations under Cuban policies (A. 48). Those reserves cannot under Cuban law be transferred to the United States, nor does the company maintain dollar reserves against Cuban policies (*id.*). Although it no longer writes insurance policies in Cuba, Confederation has maintained its Havana office to service policies previously written in that country by making payments in pesos there pursuant to Cuban law. Where the insured or beneficiary so desires, Confederation is willing and able to hold benefits now payable until requested to pay them to claimants.

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[4] The October 1959 law (A. 20-21) made any unauthorized transfer of funds abroad by any means "a felony of currency contraband" rendering guilty individuals liable to severe imprisonment and fines; companies found to violate the law were made subject to "intervention" which amounts to government seizure of the company. The law passed in February 1961 reconfirmed that pesos alone were legal tender in Cuba and said all obligations payable in Cuba, whether or not agreed upon in another currency, "shall be settled and paid necessarily" in Cuban currency (A. 19-20).

B. *The Present Suit.* When Sanchez died in 1962, Confederation advised that, pursuant to Cuban law, it was ready and willing to pay the required benefits in pesos in Havana, but that it was unable to transfer the funds to any other country (A. 54). Respondents, asserting that they were the beneficiaries under the Sanchez policy, thereafter brought the present suit in the Florida Circuit Court to require Confederation to pay the death benefits due under the policy in dollars in the United States (A. 1). The complaint identified the individual respondents as presently residing in California, Florida, and Havana (A. 1-2).

In its answer, Confederation asserted that Cuban law governed its obligations under the policy since the insurance contract was made in Cuba, insured the life of a Cuban domiciliary, and was expressly performable in Cuba (A. 7). Since the company was prepared to perform its obligations as defined by Cuban law, no breach of contract existed (A. 8). The company asserted that for a Florida court to enlarge the company's obligations as defined by Cuban law would represent an application of local law to an entirely foreign transaction in violation of the Due Process Clause of the Fourteenth Amendment; and, by this action and by disregarding the operation of a Cuban currency law on a Cuban contract, Florida would involve the United States in a violation of international law and contravene the act of state doctrine enunciated by this Court (A. 13-15, 21-22).

Florida, under normal circumstances, follows the traditional "choice of law" rule in determining what substantive law is applicable in a contract suit: questions relating to the validity and effect of the contract are governed by the law of the jurisdiction where the

contract was made and questions respecting the details of performance are controlled by the law of the place where the contract was to be performed. *Restatement, Conflicts* §§ 332, 359 (1934); *Confederation Life Ass'n* v. *Ugalde,* 164 So.2d 1 (Fla. 1964), *cert. denied,* 379 U.S. 915 (1965); *Brown* v. *Case,* 80 Fla. 703, 86 So. 684 (1920). In the present case, of course, the contract was both made and performable in Cuba.

Thus, in the *Ugalde* case, the Florida Supreme Court held that a Confederation policy issued to a Cuban resident, similar to the one involved here, "was a Cuban policy covered by Cuban law" and that "the policy was converted from a policy payable in dollars to a policy payable in pesos" by the 1951 legislation previously described. 164 So.2d at 2. Since in *Ugalde,* as in this case, the company was prepared to perform its obligations "in accordance with the terms of the contract and the law of Cuba, which govern it, in Cuban pesos in Havana, there was no breach of contract and no cause of action" against the company. *Id.*

The outcome would be the same even if Florida followed the more recent "grouping of contacts" approach to choice of law questions.[5] In passing upon similar Confederation policies the federal courts in New York held, in giving judgment for Confederation, that Cuban law applied whether one looked to the traditional conflicts rule or the grouping of contacts test; and since "under that law, [Confederation's] . . .

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[5] This rule, now followed in New York and a number of other states, determines contracts issues, absent a choice of law by the parties to the contract, according to the law of the jurisdiction having "the most significant relationship" to the transaction and the contracting parties. *Restatement (Second), Conflicts* § 188 (1971); Leflar, *American Conflicts Law* § 96 (1959); *Auten* v. *Auten,* 308 N.Y. 155, 124 N.E.2d 99 (1954). Patently, the "most significant relationship" in a case such as this one is with Cuba.

obligation is to pay in pesos" which it stands ready to do, "it has not broken its contracts." *Johansen* v. *Confederation Life Ass'n,* 312 F. Supp. 1056, 1064 (S.D.N.Y. 1970), *aff'd,* 447 F.2d 175 (2d Cir 1971).[6] *Johansen* also pointed out after a detailed review of the pertinent Cuban law that Confederation properly maintained its reserves on Cuban policies in pesos in Cuba and could not convert them to dollars. Accordingly, to require payment in dollars would simply work a hardship on the company which, because it is a mutual company, would be borne by its policyholders. 312 F. Supp. at 1065.

C. *The Decisions Below.* Despite *Ugalde* and the settled Florida conflicts rule looking to the law of the place of contract and performance, the trial court in the present case granted judgment for the respondents requiring Confederation to pay them benefits under the Sanchez policy in dollars in the United States. The court relied principally upon *Confederation Life Ass'n* v. *Vega,* 207 So.2d 33 (Fla. Dist. Ct. App.), *aff'd,* 211 So.2d 169 (Fla.), *cert. denied,* 393 U.S. 980 (1968). There, the Florida courts applied local law to a Confederation policy issued in Cuba, but in that case the insured exercised a cash surrender option in Florida; the courts concluded that this constituted the making of a second contract *in Florida,* thus creating a purported basis for invoking Florida law under the tradi-

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[6] In language fully applicable to the Sanchez policy here involved, the District Court pointed out: "The contracts were made in Cuba. According to their terms they were to be performed in Cuba. Substantially all the contacts are Cuban. [The insureds] . . . were Cuban residents and domiciliaries. They paid their premiums in Cuba. The policies were enrolled on . . . [defendant Confederation's] Cuban register. Defendant's reserves on these policies were maintained in Cuba." 312 F. Supp. at 1063.

tional conflicts rule. 207 So.2d at 36-37. The present case, however, involves no exercise of a cash surrender option in Florida or anywhere else; and the reference to *Vega* makes sense only if the purported rationale of that case is disregarded and it is viewed in retrospect as a naked attempt to apply Florida law to a Cuban contract.[7]

The intermediate appellate court in Florida reversed the trial court on procedural grounds (p. 5a, *infra*), but the Florida Supreme Court reinstated the trial court's judgment (p. 7a, *infra*). Without legal analysis of any kind concerning the choice of law question, the Florida Supreme Court held that its *Vega* decision controlled the present case. It did not even pretend to find that any contract here had been made in Florida. In each court in the proceedings below, the federal questions raised by this petition were presented and in each instance they were ignored by the Florida courts.[8]

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[7] The trial court also referred to *Imperial Life Assurance Co. of Canada* v. *Colmenares*, [1967] Can. L. Rep. 447 (Sup. Ct.), where in construing a quite different insurance policy, issued by a different company, the court declined to apply Cuban law. Whereas in the present case the insurance contract was made in Cuba and was expressly performable there, the contract in *Colmenares* was found to have been made in Canada and premiums and benefits were expressly payable by bank draft drawn on New York. The decision accordingly has no relevance whatever to the present facts and the Florida Supreme Court in this case did not even refer to it.

[8] Confederation raised the federal questions in the Florida courts by its answer to the complaint (A. 13-15, 21-22) and its memorandum of law, pp. 11-13, in the Circuit Court; by its brief, pp. 36-45, in the District Court of Appeal; and by its brief on the merits, pp. 26-28, in the Florida Supreme Court. In each court Confederation argued that to apply the law of a jurisdiction other than Cuba to determine Confederation's rights and obligations under the Sanchez policy would violate the Due Process Clause of the Fourteenth Amendment, infringe international law, and contravene the act of state doctrine.

From the surrounding circumstances, it is now clear that the Florida courts will require Confederation to pay in dollars in the United States—at the rate of one dollar for each peso owing—all claims under the many similar Cuban policies it has issued that are still outstanding. Although such claims would fail in other jurisdictions under any accepted choice of law rule,[9] a vast number of former Cubans who have immigrated to this country reside in Florida; and, as the present complaint shows, residents of other states can readily travel to take advantage of the Florida courts. If the Florida court's decision goes unchecked and is taken to cover contracts expressed in Cuban pesos, the potential liability of Confederation alone is conservatively estimated at $15 million and may well be many millions of dollars more.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Violates the Fourteenth Amendment and Conflicts With Decisions of This Court Precluding States From Applying Local Law to Wholly Foreign Transactions.

One of the most fundamental limitations imposed by the Due Process Clause of the Fourteenth Amendment as interpreted by this Court is that forbidding any state to apply its local law to alter substantive obligations arising out of a foreign transaction having no significant relation to the state. *E.g., Clay* v. *Sun Ins.*

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[9] Every court apart from the Florida state courts which has considered a comparable claim against Confederation on one of its Cuban policies has held that Cuban law applies to determine the company's obligations. *E.g., Johansen* v. *Confederation Life Ass'n*, 312 F. Supp. 1056 (S.D.N.Y. 1970), *aff'd*, 447 F.2d 175 (2d Cir. 1971); *Ramil* v. *Confederation Life Ass'n*, Equity No. 88020, Mass. Superior Court, Dec. 22, 1971; *Santovenia* v. *Confederation Life Ass'n*, No. 70-688-Civ.-CA, S.D. Fla., Aug. 17, 1971, *appeal pending*, No. 71-2928, 5th Cir.

Office, Ltd., 377 U.S. 179 (1964); *Watson* v. *Employers Liability Assurance Corp.*, 348 U.S. 66 (1954); *Hartford Accident & Indem. Co.* v. *Delta & Pine Land Co.*, 292 U.S. 143 (1934); *Home Ins. Co.* v. *Dick*, 281 U.S. 397 (1930). As these decisions make clear, it is not merely unjustifiable policy but a violation of the Constitution to apply local law where the state's relation to the transaction is "too slight and too casual, as in the *Delta & Pine Land Co.* case" or where it is "wholly lacking, as in the *Dick* case." *Clay* v. *Sun Ins. Office, Ltd., supra,* at 182 (footnote omitted).

In this aspect, the Due Process Clause serves "to bar hog-wild misapplications of any kind of irrelevant law to a set of extrastate facts." Leflar, "Constitutional Limits on Free Choice of Law," 28 *Law & Contemp. Prob.* 706, 707 (1963). By limiting application of local law to instances where the forum state has substantial if not predominant contacts with the transaction, the Due Process Clause serves to protect the contracting parties' interest in "fair play and substantial justice." *Id.* Beyond the interests of the parties, however, the restriction draws an outer boundary for a state's jurisdiction to "legislate" with respect to foreign transactions. See p. 15, *infra.*

In the present case, virtually every significant contact of the transaction is with Cuba: the policy was negotiated there and became effective there; it was to be performed there by its express terms; all premium payments were made in Cuba; the policy application and the policy were drawn in Spanish; their terms conformed to Cuban law; the policy was issued through the Havana office of Confederation and notarized in Cuba; assets to cover Confederation's policy obligations were maintained in Cuba; and the insured was a

Cuban citizen who lived throughout his life in Cuba, resided there when the policy was negotiated, and died in that country. See pp. 4-5, *supra.*

The Florida court's decision disregards the constitutional principle laid down by this Court and cannot be reconciled with *Home Ins. Co.* v. *Dick, supra.* There Dick, a citizen of Texas, brought suit in a Texas state court to recover on a policy insuring his vessel against loss while in Mexican waters. Dick's policy had been issued in Mexico by a Mexican company, protecting against loss which might occur there, and both premiums and loss were payable in Mexico. 281 U.S. at 403-04. A defense to liability existed under a one-year limitations clause in the policy which was valid if the law of Mexico governed the contract. Applying local law instead, the Texas courts held the insurer liable. Speaking for a unanimous Court, Mr. Justice Brandeis concluded that, given the close relationship of the transaction with Mexico and the absence of substantial contact with Texas, the Texas courts violated the Due Process Clause by applying Texas law.[10]

Due Process standards are not satisfied by Florida in this case simply because two of the six respondents have taken up residence in Florida (A. 1-2). Limitations on state authority to regulate foreign transactions would have little meaning if the complaining party could avoid them merely by coming into a state and

[10] 281 U.S. at 410. As the Court summarized: "All acts relating to the making of the policy were done in Mexico. . . . And, likewise, all things in regard to performance were to be done outside of Texas. . . . Texas was, therefore, without power to affect the terms of the contracts so made. Its attempt to impose a greater obligation than that agreed upon and to seize property in payment of the imposed obligation violates the guaranty against deprivation of property without due process of law." *Id.* at 408.

subjecting himself to its jurisdiction. In *Dick,* the insured's permanent residence at the time of suit was in Texas, and this Court deemed the fact "without significance" since the critical events all occurred in Mexico. 281 U.S. at 408. Certainly in the case of a life insurance contract "if domicile is to be determinative . . . it seems more logical to look at the domicile of the insureds themselves at the time they entered into the contracts, rather than to the domicile of the plaintiffs at the time of bringing suit." *Johansen* v. *Confederation Life Ass'n, supra,* 447 F.2d at 179. *Accord, Restatement (Second), Conflicts* § 192 (1971).

"No one suggests that the *Dick* case is wrong or is likely to be overruled." Leflar, *supra,* 28 *Law & Contemp. Prob.* at 717. On the contrary, as the widening scope of corporate operations makes individual companies amenable to suit in many jurisdictions, it becomes more critical to maintain such Due Process restraints against unwarranted intrusions into foreign transactions of local law that upsets parties' legitimate expectations. These checks are essential to afford fair and predictable treatment to individual litigants where a forum foreign to the transaction chooses to entertain suits upon it. Such checks are no less essential to avoid conflicts between states themselves in asserting regulatory authority over transactions beyond their borders.

The limit on a state's ability to "choose" its own law in deciding a civil suit is only one of a number of comparable limitations applied by this Court under the Due Process Clause in order to keep the exercise of state authority in proper bounds. Delimiting the measure of a state's power to reach beyond its borders to tax, to effect process and to forbid private conduct

has been one of the recurring responsibilities of this Court over many years.[11] In recent years, as in the past, this Court has been alert to police these outer limits, where states have approached them, as in *Clay* v. *Sun Life Ins. Office, Ltd., supra,* or exceeded them, as in *Norfolk & W. Ry.* v. *Missouri State Tax Comm'n,* 390 U.S. 317 (1968), and in this case.

The considerations of fairness which underlie the Due Process Clause and justify review in this case are enhanced here by several additional circumstances. The decision of the court below is, by any test, an illogical and unexplained departure from the traditional conflicts rules which the Florida courts have applied in the past (see pp. 7-8, *supra*) and which they have continued to apply contemporaneously with this case in disputes not involving Cuban insurance contracts. See, *e.g., State-Wide Ins. Co.* v. *Flaks,* 233 So.2d 400, 402 (Fla. Dist. Ct. App.), *cert. dismissed,* 238 So.2d 427 (Fla. 1970). This sequence of events, coupled with the refusal of the Florida Supreme Court even to comment upon the substantial federal questions presented to it, invites the inevitable suspicion that a foreign corporation is not receiving the even-handed justice that it has the right to expect in American courts.

This Court may also properly consider, in determining to grant plenary review of the substantial federal questions presented, that the present controversy is arising repeatedly in the American courts so that reso-

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[11] *E.g., Norfolk & W. Ry.* v. *Missouri State Tax Comm'n,* 390 U.S. 317 (1968) (state authority to tax foreign property); *International Shoe Co.* v. *Washington,* 326 U.S. 310 (1945) (personal jurisdiction of state over foreign corporation); *Allgeyer* v. *Louisiana,* 165 U.S. 578 (1897) (regulatory authority of state to prohibit extrastate conduct).

lution by this Court will be of great precedential importance. Confederation has estimated its outstanding liabilities to Cubans under Cuban policies as approximating $15 million and a far larger amount may ultimately be at stake; the Cubans who have immigrated to this country, now estimated to number approximately 400,000, necessarily include a very large number of insureds and beneficiaries. Suits involving Cuban insurance policy claims against Confederation alone, quite apart from suits involving other insurers, have already been litigated in state and federal courts (see, *e.g.,* p. 11, n. 9, *supra*) and many more are virtually inevitable.

Finally, no one can fairly predict what the Cuban Government will do in the event that, contrary to Cuban law, Confederation is compelled to discharge Cuban obligations, payable in pesos in Cuba, through the payment of dollar judgments in the United States. The fact remains that Confederation has been responsibly advised by an expert in Cuban law that Cuba prohibits dollar payments of the Cuban obligations here involved (A. 57), and the company has both assets and employees in Cuba that are subject to the severe sanctions applicable under Cuban law for acts that government construes as violating its currency restrictions. See p. 6, n. 4, *supra.* This Court has previously deemed it an important element weighing in favor of review that the decision below required a party to violate foreign law. *Societe Internationale* v. *Rogers,* 357 U.S. 197, 211-12 (1958).

II. The Lower Court's Decision Involves the United States in a Violation of International Law and Thus Infringes the Authority of the Federal Government Over Foreign Affairs.

The improper application of Florida law in the present case not only violated the Fourteenth Amendment but involved the United States in a breach of international law. International law is violated when courts prejudicially alter the rights and obligations of a foreign national arising out of a transaction having little or no substantial contact with the forum state. See *Restatement (Second), Foreign Relations Law of the United States* § 19 & comment d (1965). The facts already described show that the transaction in this case had a close and extensive relationship to Cuba and no connection at all with Florida, and they also establish that the rights of Confederation under Cuban law have been abrogated by the lower court's decision.

The principle that foreign contract rights cannot be abrogated by local courts has been asserted by the United States Government in espousing a claim on behalf of American citizens. *The Alsop Claim (United States* v. *Chile),* 5 *Am. J. Int'l L.* 1079 (1911). In that case, the United States contended before an arbitral tribunal that Chilean courts improperly deprived a company owned by American citizens of its rights under a Bolivian contract by applying Chilean rather than Bolivian law to suits brought on the company's behalf. The United States asserted that the Government of Chile was liable in damages for the acts of its courts in applying Chilean law, notwithstanding that

Chile had in the meantime occupied the area of Bolivia where the contract rights were to be exercised.[12]

By injuring a foreign national through a violation of international law, "the court commits an international delict and subjects the State to diplomatic representations or the possible award of damages or other reparation by an international tribunal." Stevenson, "The Relationship of Private International Law to Public International Law," 52 *Colum. L. Rev.* 561, 574 (1952) (footnote omitted); 5 Hackworth, *Digest of International Law* § 522 (1943); Briggs, *The Law of Nations* 677-80 (1952). As already noted, the United States has itself sought reparations for American citizens where another nation's courts abrogated vested contract rights arising under foreign law.

It is no defense to claims against the United States that the injury was done by a state rather than a federal court since under international law the conduct of a political sub-unit in causing injury to an alien is "attributable" to the national government. *Restatement (Second), Foreign Relations Law of the United States* § 170 (1965); 5 Hackworth, *Digest of International Law* § 527 (1943). Indeed, it is the responsibility of the United States for Florida's action under international law, and the adverse consequences of that action upon the conduct of foreign affairs by the United States, that make that action a matter of direct federal concern and accordingly render it subject to overriding federal law. *Zschernig* v. *Miller,* 389 U.S. 429 (1968);

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[12] U.S. Dep't of State, *The Alsop Claim—The Case of the United States* 198-220 (GPO 1910). The claim failed in that instance on several grounds, but the tribunal did not question the principle asserted by the United States. See 5 *Am. J. Int'l L.* at 1097.

Banco Nacional de Cuba v. *Sabbatino,* 376 U.S. 398 (1964).[13]

In the *Zschernig* case this Court held that the Oregon courts' application of state inheritance statutes to interfere with claims of citizens of "iron curtain" countries represented an impermissible "state involvement in foreign affairs and international relations—matters which the Constitution entrusts solely to the Federal Government . . . ." 389 U.S. at 436. There, this Court disallowed the state's action because of the "persistent and subtle" effect on international relations of the inquiry conducted by the state court, 389 U.S. at 440, and its potential for embarrassment of the Federal Government. In the present case, there is not merely a subtle effect on the conduct of international relations by the Federal Government but a violation of international law, and the United States is not merely embarrassed but made subject to legal liability through diplomatic or arbitral channels.

When courts in this country improperly extend local law to regulate foreign transactions, they establish a precedent no less applicable to Americans in foreign courts. As this Court said in *Lauritzen* v. *Larsen,* 345 U.S. 571, 582 (1953):

> "[I]n dealing with international commerce we cannot be unmindful of the necessity for mutual forbearance if retaliations are to be avoided; nor should we forget that any contact which we hold sufficient to warrant application of our law to a

[13] Where the interests of the United States are affected by state action, it is well settled that federal law is pre-emptive, both where the United States is a party to the suit, *Clearfield Trust Co.* v. *United States,* 318 U.S. 363 (1943), and where the suit is between private parties, *Howard* v. *Lyons,* 360 U.S. 593, 597 (1959).

> foreign transaction will logically be as strong a warrant for a foreign country to apply its law to an American transaction."

Thus, protection of the rights of foreign nationals under international law, when those nationals are subjected to litigation in American courts, serves not only the interests of the Federal Government but also those of the citizens of this country.

III. Florida Has Acted Inconsistently With This Court's Act of State Doctrine, Which Is Binding on Both State and Federal Courts, by Disregarding the Effect of Cuban Currency Legislation on a Cuban Contract.

Quite apart from the violation of international law, the decision of the Florida Supreme Court conflicts with the act of state doctrine recently reaffirmed by this Court in *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398 (1964). Under that doctrine an American court may not in the course of deciding a controversy re-examine, nullify or disregard an act of state of a recognized foreign government so far as that act has determined rights or obligations which are subject to its jurisdiction. This Court has said that under the governing principle "when it is made to appear that a foreign government has acted in a given way on the subject-matter of the litigation, the details of such action or the merits of the result cannot be questioned but must be accepted by our courts as a rule for their decision." *Banco Nacional de Cuba* v. *Sabbatino*, *supra*, at 418, quoting *Ricaud* v. *American Metal Co.*, 246 U.S. 304, 309 (1918).

In this instance, the legislation of the Cuban Government, depriving the dollar of legal tender status in Cuba and converting dollar obligations payable in Cuba into peso obligations, was certainly an act of

state of the most traditional kind. In a mirror image of the Cuban legislation, Congress provided in the Foraker Act § 11, 31 Stat. 77, 80 (1900), for the substitution of United States dollars for Puerto Rican pesos after that province was ceded to the United States, and existing peso obligations in Puerto Rico were thereby converted into dollar obligations at the ratio provided in the statute. This Court approved the Foraker Act's application to a pre-existing contract in *Sherralles' Succession* v. *Esbri,* 200 U.S. 103 (1906), and that case is only one of a number of decisions throughout the years confirming that this and comparable currency legislation are conventional exercises of national legislative authority.[14]

The Cuban legislation in this case operated upon contractual obligations arising under Cuban law, performable in Cuba and relating to insurance upon the life of a Cuban national. The act of state doctrine is no less applicable because the legislation of the Cuban Government was directed to contractual interests arising under local law rather than to tangible personal property located within the territory.[15] As the court

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[14] *Guaranty Trust Co.* v. *Henwood,* 307 U.S. 247, 258-59 (1939); *Norman* v. *Baltimore & O. R.R.,* 294 U.S. 240, 307-08 (1935); *Legal Tender Cases,* 79 U.S. (12 Wall.) 457, 548-49 (1870). As the Court said in the *Legal Tender Cases:* "Every contract for the payment of money, simply, is necessarily subject to the constitutional power of the government over the currency . . . and the obligation of the parties is, therefore, assumed with reference to that power." 79 U.S. (12 Wall.) at 549.

[15] The act of state doctrine is fully applicable to acts of state which affect intangible commercial rights, *e.g., American Banana Co.* v. *United Fruit Co.,* 213 U.S. 347 (1909) (unfair competition), and rights having no relation to property at all, *e.g., Underhill* v. *Hernandez,* 168 U.S. 250 (1897) (false imprisonment). The *locus classicus* of the act of state doctrine, *Blad* v. *Bamfield,* 3 Swans. 604, 36 Eng. Rep. 992 (1674), cited in *Sabbatino, supra,* 376 U.S. at 416, involved contract claims.

said in *Johansen,* "The 1951 Cuban law in effect changed the contract from a dollar contract to a peso contract." 312 F. Supp. at 1063.

Under the act of state doctrine Florida is not entitled to disregard the operation of Cuban legislation on Confederation's Cuban contractual obligations. While the Florida courts need not entertain claims such as this one arising under contracts made abroad, when they choose to do so the pertinent foreign act of state "cannot be questioned but must be accepted by our courts as a rule for their decision." *Banco Nacional de Cuba* v. *Sabbatino, supra* (quoted p. 20, *supra*). Patently, in this case the Florida courts did not accept the Cuban currency legislation as controlling the insurer's obligations under the contract.

Upon both principle and policy, the present case is governed by *Sabbatino.* Thus, in *Sabbatino* the lower court was compelled to recognize that a Cuban act of state had by expropriation transferred ownership of property then located in Cuba, even though the property was subsequently shipped abroad and made the subject of suit in this country; similarly, in this instance the Florida courts were compelled to recognize that a Cuban act of state had converted contract claims of a Cuban citizen arising under Cuban law from dollar to peso obligations, even though those claims

were thereafter made the subject of suit in American courts.[16]

The act of state doctrine derives, as the Court made clear in *Sabbatino,* not from international law but from the constitutional responsibility of the federal executive and legislative branches to conduct foreign relations. 376 U.S. at 421-24. The opinion makes equally clear that the constraints of the act of state doctrine are as binding upon the state courts as upon federal ones. *Id.* at 424-27. The actions of the Florida courts in this case dramatically illustrate the very dangers which this Court foresaw in *Sabbatino* as justifying the act of state doctrine, and the present case is equally deserving of plenary review in this Court.

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[16] Following the *Sabbatino* decision, Congress passed the Hickenlooper Amendment, which made the act of state doctrine inapplicable in the case of confiscations or takings in violation of international law, 22 U.S.C. § 2370(e)(2)(1970), but which otherwise left the doctrine unaffected, S.Rep. No. 1188, 88th Cong., 2d Sess. 24 (1964). The Amendment has no application here, since "a currency regulation which alters either the value or character of the money to be paid in satisfaction of contracts is not a 'confiscation' or 'taking.'" *French* v. *Banco Nacional de Cuba,* 23 N.Y.2d 46, 55, 242 N.E.2d 704, 710 (1968). In addition, the conversion of the claims here from dollar to peso claims occurred in 1951, as the company recognized in its premium notices, and the Hickenlooper Amendment applies by its terms only to confiscations and takings "after January 1, 1959."

CONCLUSION

For the reasons stated above, the writ of certiorari should be granted.

Respectfully submitted,

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May 1972

APPENDIX

APPENDIX

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

No. 67-10571

HECTOR DE LARA, ET AL, *Plaintiffs*,

v.

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, *Defendant*.

Final Judgment and Decree

THIS CAUSE having come on for hearing and the Court having read the pleadings, and examined the exhibits, and having heard the testimony of the witnesses, and having had an opportunity to observe their demeanor and evaluate their testimony, and the Court having been advised by counsel for the respective parties, and being of the opinion that a Final Judgment and Decree should be entered in this cause, the Court hereby makes findings of fact, draws conclusions of law, and enters Final Judgment and Decree as follows:

FINDINGS OF FACT

1) The Plaintiffs are the heirs at law of German Lopez Sanchez, deceased.

2) The life of German Lopez Sanchez was insured by the Defendant under its policy No. 494 684, insured May 4, 1938. The said policy was issued by the Defendant at its home office in Toronto, Canada, pursuant to an application made by German Lopez Sanchez. German Lopez Sanchez was a resident of Cuba at the time the policy was issued and until his death on June 8, 1962. The Defendant is a corporation under the laws of Canada whose principal place of business is in Toronto, Canada. The Defendant is authorized to do business in the State of Florida.

3) The insurance policy in question is in Spanish. A translation was introduced in evidence. The policy provides in pertinent part as follows:

> PLACES OF INTEREST: All amounts payable or receivable under this policy shall be paid at the chief office of the Association in the city of Havana, Republic of Cuba, but the insured may, with the consent of the Association, make payment elsewhere.
>
> CURRENCY: All amounts payable or receivable under this policy shall be paid in lawful currency of the United States of America."

4) On October 31, 1962, a written demand for payment in dollars in the United States under the policy was made by the Plaintiffs on Defendant. Defendant has refused to pay except in Cuban pesos in Havana.

5) The parties Plaintiff with the exception of Rosalia Lopez Orue are all now resident in the United States. Rosalia Lopez Orue has assigned her interest in the policy to the Plaintiffs resident in the United States by written document which was introduced in evidence.

6) The parties Plaintiff residing in the United States are political refugees from Cuba and are now unable to return to Cuba without personal risk to themselves.

CONLUSIONS OF LAW

1) This action is properly brought in this Court inasmuch as it is an action on an insurance contract which is transitory and which can be begun wherever service on the Defendant can be perfected. *Confederation Life Assoc.* v. *Vega,* 135 S. 2nd 867 (3 DCA Fla. 1962). The defense of *forum non conveniens* is not applicable to Defendant.

2) This case is governed by the principles laid down in *Confederation Life Assoc.* v. *Vega,* 207 So. 2nd 33 (3 DCA

Fla. 1968), and this Court in equity has the power to grant to the Plaintiffs recovery in United States dollars. In that connection, the Court notices and adopts that portion of the Opinion in *Confederation Life Assoc.* v. *Vega,* which provides:

> "In the instant case there is no doubt that the plaintiff would have an absolute right to a meaningful recovery were it not for the revolution in Cuba * * * Applying the maxim that equity looks at the substance rather than the form of the transaction and since the primary purpose of this transaction is the payment of the cash surrender value of the policy after a period of twenty years, and the provision of payment being made in Havana is merely for the convenience of the parties, there is no equitable reason why the plaintiff should not recover."

In the Opinion of the Court, the principles above stated govern this case. The distinction made by the Defendant here that the *Vega* case relates to payment of cash surrender value, whereas this case relates to the payment of the death benefit is a distinction without substantial difference. This Court has power to grant Plaintiffs a meaningful recovery.

3) Assuming that the argument made by the Defendant that the *lex loci contractus* governs is valid, the result would be the same. The Court finds that the place of making of the contract was Toronto, Canada, and that the *lex loci contractus* is Canadian law which would govern this Defendant (which is a Canadian corporation having its principal place of business in Toronto). The Supreme Court of Canada in the case of *Imperial Life Assurance Co. of Canada* v. *Segundo Casteleiro y Colmenares,* copy of which Opinion is filed in this cause, specifically held that the Canadian law governs a factual situation virtually on all fours with the situation in this case and thus the Cuban law urged by the Defendant does not govern the case at bar.

WHEREFORE, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1) The foregoing recitals, findings of fact, and conclusions of law be and they hereby are incorporated into the decretal portions of this Judgment.

2) This Court has jurisdiction of the parties and of the subject matter of this cause.

3) The equities of this cause are with the Plaintiffs and against the Defendant.

4) The Motions for Summary Judgment made by the Defendant, and which were by consent of the parties, to be heard and determined along with the cause itself on final hearing be and the same are hereby denied.

5) The Defendant be and it hereby is ordered to pay to the Plaintiffs, including the assigns of Rosalia Lopez Orue the sum of $10,000 plus bonuses and interest from October 31, 1962; the amount of said bonuses and interest to be fixed by subsequent Order after notice and hearing.

6) Shalle Stephen Fine, as attorney for the Plaintiffs, be and he hereby is awarded attorney's fees in an amount to be fixed by subsequent Order after notice and hearing.

7) The Plaintiffs are hereby awarded costs in this cause in an amount to be taxed by subsequent Order after notice and hearing.

8) The Court retains jurisdiction over this cause for the purpose of making such subsequent Orders taxing costs, setting attorney's fees and fixing the amount of bonuses and interest as are hereinabove referred to.

DONE AND ORDERED at the Courthouse at Miami, Dade County, Florida, this 23rd day of September, 1969.

MARSHALL C. WISEHEART
Marshall C. Wiseheart,
Circuit Judge

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 1971

CASE No. 70-258

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, *Appellant*,

v.

HECTOR DE LARA, ET AL., *Appellees*.

Opinion filed January 26, 1971.

An Appeal from the Circuit Court for Dade County, Marshall C. Wiseheart, Judge.

Shutts & Bowen and Phillip G. Newcomm, for appellant.

Shalle Stephen Fine, for appellees.

Before PEARSON, C.J., and HENDRY and SWANN, JJ.

Opinion

PER CURIAM.

Defendant, Confederation Life Association, a Canadian insurance company, appeals from a final decree for the appellees, who were the plaintiffs below.

The plaintiffs brought an action against the insurance company in the Circuit Court of Dade County, Florida. They alleged that they were beneficiaries of the proceeds of a life insurance policy which the insurance company had issued on the life of one German Lopez Sanchez.

The complaint sought relief which could be characterized as "equitable" and "legal". The final decree found that the equities were with the plaintiffs and under the principles of Confederation Life Association v. Vega y Arminan, Fla.App.1968, 207 So.2d 33, Cert. discharged, Fla.1968, 211 So.2d 169, ordered the insurance company to pay plaintiffs

the sum of Ten Thousand Dollars plus bonuses and interest from October 31, 1963.

On appeal there is a difference of opinion between the parties as to whether plaintiffs were seeking legal or equitable relief in the trial court. Plaintiffs argue that they were seeking and obtained specific performance of the insurance contract in question.

An examination of the complaint shows that it did not contain any allegation that plaintiffs were without a plain adequate and complete remedy at law. See 29A Fla.Jur. Specific Performance § 14. Neither is there proof that plaintiffs had an inadequate or incomplete remedy at law. Cf. Confederation Life Association v. Vega y Arminan, Fla.App.1968, 207 So.2d 33, P. 35. We hold, therefore, that plaintiff's action was not in the posture of Vega, supra, and this action was not controlled or governed by the equitable principles pronounced therein.

The final decree herein appealed is

Reversed.

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A.D. 1971

CASE NO. 40,957

DISTRICT COURT NO. 70-258

HECTOR DE LARA, JR., ET AL., *Petitioners*,

v.

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, *Respondent*.

Opinion filed December 1, 1971.

Writ of Certiorari to the District Court of Appeal, Third District.

Shalle Stephen Fine, for Petitioner.

Shutts & Bowen, Thomas H. Anderson and Phillip G. Newcomm, for Respondent.

Opinion

ERVIN, Acting Chief Justice

We have for review on petition for writ of certiorari a decision of the District Court of Appeal, Third District. Confederation Life Association v. deLara, Fla.App.1971, 244 So.2d 539. We have jurisdiction under Article V, Section 4(2) of the Florida Constitution because this decision conflicts with Confederation Life Association v. Vega, Fla. App.1968, 207 So.2d 33, which opinion was adopted by this Court in Confederation Life Association v. Vega, Fla.1968, 211 So.2d 169.

This is another case arising out of attempts to recover in the United States in United States dollars the face amount of life insurance policies sold in Havana, Cuba, to Cuban nationals.

In 1938, Respondent, a Canadian life insurance company authorized to do business in Cuba and in Florida, insured for $10,000 the life of one German Lopez Sanchez, a Cuban

national living in Havana. The insurance policy was applied for, and delivered, in Cuba. It contained the following pertinent provisions:

> "PLACES OF PAYMENT.—All sums payable or exigible under this policy shall be paid at the principal office of the Association in the City of Havana, Republic of Cuba, but the insured may, with the assent of the Association, make his payments elsewhere.
>
> "CURRENCY.—All sums payable or exigible under this policy shall be paid in lawful currency of the United States of America."

Following the enactment of a new Cuban law on July 1, 1951, the Association notified its insured that:

> "All premiums payable in accordance with this policy as well as all other liabilities contracted under the same and in which a reference is made to American currency, will from now on be payable in Cuban National currency, at par, in accordance with Law No. 13 of 1948 and Decree No. 1384 of April 1951."

The insured died on June 8, 1962, leaving Petitioners as his beneficiaries under the policy. All the Petitioners with the exception of Rosalia Lopez Orue now live in the United States. Petitioner Orue has assigned her rights to the proceeds to the other beneficiaries. After the insured's death, Petitioners filed their claim for the policy's benefits, requesting payment in the United States in United States dollars. Respondent advised them it would only pay them in Cuba in Cuban pesos.

Petitioners filed suit in the Dade County Circuit Court for the face amount of the policy plus interest and bonuses. In his Final Judgment, the trial judge concluded:

> "This case is governed by the principles laid down in Confederation Life Assoc. v. Vega [citation omitted] *and this Court in equity has the power to grant to the Plaintiffs recovery in United States dollars. . . .*"

On appeal, the Third District Court reversed. That court said:

> "The complaint sought relief which could be characterized as 'equitable' and 'legal.' The final decree found that the equities were with the plaintiffs and under the principles of Confederation Life Association v. Vega y Arminan [citation omitted] ordered the insurance company to pay plaintiffs the sum of Ten Thousand Dollars plus bonuses and interest from October 31, 1963.
>
> "On appeal there is a difference of opinion between the parties as to whether plaintiffs were seeking legal or equitable relief in the trial court. Plaintiffs argue that they were seeking and obtained specific performance of the insurance contract in question.
>
> "An examination of the complaint shows that it did not contain any allegation that plaintiffs were without a plain, adequate and complete remedy at law. See 29A Fla. Jur. Specific Performance § 14. Neither is there proof that plaintiffs had an inadequate or incomplete remedy at law. Cf. Confederation Life Association v. Vega y Arminan [citation omitted]. We hold, therefore, that plaintiff's action was not in the posture of Vega, supra, and this action was not controlled or governed by the equitable principles pronounced therein."

We are unable to agree with the District Court's conclusion relative a supposed pleading defect in respect to Petitioners' seeking an equitable remedy in the trial court. Distinctions between "equitable" and "legal" remedies are not favored in modern practice and belong to a bygone day. They are not present in our modern Rules of Civil Procedure. Rule 1.040, F.R.C.P. See also, authors' comment to the Rule in 31 FSA. The trial court clearly recognized the complaint sought equitable relief and granted it.

The problem set forth in the complaint was obvious and, as alleged, was in and of itself a predicate for equitable relief. The relief sought in the complaint was payment to the Petitioners of the policy benefits in the form of United States dollars in the United States, not Cuban pesos paid in the City of Havana, Republic of Cuba. Obviously, under outmoded rules of practice the policy, as subsequently unilaterally modified by the insuror as to the currency to be paid and place of payment, could not be read to afford Petitioners meaningful substantial equity relief in an ancient law action. But our trial courts are no longer so restricted and may treat a complaint as an equitable action, if such is the obvious purpose. Specific performance was here sought seeking payment in United States dollars.

The trial judge properly considered the instant situation as falling within the ambit of the rationale of Confederation Life Association v. Vega, supra. He recognized that the international situation has not materially changed since the rendition of the Vega decision. He well knew Cuban nationals who are refugees in the United States are still severely handicapped in their free access to visit, trade or conclude business matters in Cuba in Cuban currency, or with resident Cuban citizens or business concerns therein. Moreover, he knew the insuror was a Canadian corporation which was subject to liability, both in Canada and in the United States for its obligations under its issued life insurance policies, and that the original policy provided for payment in United States dollars.

Accordingly, we believe the rule in the Vega case is clearly applicable here and we so hold.

The decision of the District Court is quashed and the cause is remanded with instructions to reinstate the order of the trial court.

It is so ordered.

Boyd, McCain and Dekle, JJ., and Spector, District Court Judge, concur.

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A.D. 1972
TUESDAY, FEBRUARY 15, 1972

CASE No. 40,957

HECTOR DE LARA, JR., ET AL., *Petitioners,*

v.

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, *Respondent.*

Order Denying Petition for Rehearing

On consideration of the Petition for Rehearing filed by attorneys for Respondent,

IT IS ORDERED by the Court that said Petition be, and the same is hereby, denied.

cc: HON. WILLIAM P. CARTER, *Clerk*
HON. E. B. LEATHERMAN, *Clerk*
HON. SHALLE STEPHEN FINE
MESSRS. SHUTTS & BOWEN

A True Copy

TEST:

SID J. WHITE
Sid J. White
Clerk Supreme Court.

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1487

CONFEDERATION LIFE INSURANCE COMPANY,
PETITIONER

v.

HECTOR DE LARA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

At the request of the Department of State, I transmit the attached note from the Canadian Ambassador to the Secretary of State concerning this case.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1972.

468-165—72

CANADIAN EMBASSY—AMBASSADE DU CANADA

WASHINGTON, D.C.,
May 15, 1972.

No. 127

Hon. WILLIAM P. ROGERS,
The Secretary of State,
Washington, D.C.

SIR: I have the honour, acting on instructions of and on behalf of the Government of Canada, to present the following observations of the Canadian Government on the pending petition to the Supreme Court of the United States of America, October Term 1971, for a writ of certiorari to the Supreme Court of Florida, in the case of Confederation Life Insurance Company, a Canadian corporation, petitioner, versus Hector deLara, respondent. I have the honour to request you to transmit this Note, or the representations made therein, to the Supreme Court of the United States for its consideration.

The Government of Canada wishes to express its serious concern with respect to the effect of earlier rulings in this case in the Circuit Court of the Eleventh Judicial Circuit of Dade County, Florida; and in the Supreme Court of Florida which quashed the decision of the District Court of Appeal of Florida. The Government of Canada is anxious that the judgment of the Supreme Court of Florida be reviewed by the Supreme Court of the United States.

While the petition in question might appear to involve only the matter of a single policy of insurance—under which is payable the amount of Ten Thousand Dollars—it is the view of the Government of Canada that the implications of the deLara decision are of a much greater and more serious magnitude. It is the hope of the Canadian Government that the Supreme Court of the United States may take into account the following considerations when the Court considers this petition.

There are ten major Canadian life insurance companies that might be affected by the deLara decision, all of which have written policies of insurance in countries other than the United States and Canada having a total cash surrender value considerably in excess of $1 billion. If the precedent established by the deLara decision remains unchanged, then in cases where insurance policies are payable in currencies determined either by the parties to the contract or by an act of government, policyholders who had purchased policies outside the United States and who do not still reside in the countries where the policies were issued could evade the foreign exchange control regulations of the country where the policies were issued by demanding payment of the cash surrender value of their policies in Florida. Further, as funds covering the liabilities represented by insurance policies issued in any jurisdiction, including Canada and the American states, must be maintained in that jurisdiction and are subject to any foreign exchange control regulations of that jurisdiction which may prevent the insurance

company from drawing on such funds to satisfy the demands, the insurance company would have to draw on its reserves of United States dollars or convert its Canadian dollar reserves to United States dollars to meet its future obligations and could also bring the insurance company into conflict with the laws of the country where the contract was made, which in the case of Cuba, would result in the confiscation of the insurance company's assets in Cuba.

It is not the intention of the Government of Canada to ask for leave to intervene in the case directly. However, because of the potential seriousness of the deLara decision, the Canadian Government is desirous that the case be reviewed by the Supreme Court of the United States.

I therefore hope that you may consider it feasible and appropriate to transmit this Note to the Supreme Court of the United States of America in order that the Court may be able to take into account the views of the Government of Canada when it considers the pending petition.

Please accept, Sir, the renewed assurances of my highest consideration.

M. Cadieux,
M. CADIEUX,
Ambassador.

U.S. GOVERNMENT PRINTING OFFICE: 1972

JUN 14 1972

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1487

CONFEDERATION LIFE INSURANCE CO.,
Petitioner,

vs.

HECTOR de LARA, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF FLORIDA

BRIEF OF RESPONDENTS TO PETITION FOR CERTIORARI

SHALLE STEPHEN FINE and
JUAN ACOSTA
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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1487

CONFEDERATION LIFE INSURANCE CO.,
Petitioner,

vs.

HECTOR de LARA, et al.,
Respondents.

REPLY BRIEF OF THE RESPONDENTS TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

The Respondents accept the references to opinions below, jurisdiction and constitutional provisions involved as set out in the Petition.

QUESTIONS PRESENTED

Because of the nature of the case, the arguments made by the Petitioner can be answered most directly by restating the questions presented. As restated, there are only two questions which can be considered:

1) In an ambulatory suit on an insurance contract, is Florida entitled to make its own determination as to choice of foreign law to be applied and to choose Canadian law to be applied to a Canadian corporation on a Canadian contract?

2) In a suit on an insurance contract which is executed, except for the payment of money by the insuror, can Florida require a Canadian insuror to pay in dollars which it has contracted to pay in lawful money of the United States?

STATEMENT OF FACTS

References to the appendix to the Petition for Certiorari will be made by use of the symbol "App." with appropriate page number. References to the appendix to the Petitioner's brief in the Florida Supreme Court, which Petitioner states on page 3 of the Petition has been lodged in this Court, will be made by use of the symbol "Fla. App." with appropriate page number.

The Petitioner is a Canadian corporation in the business of underwriting life insurance and is authorized to do business in Florida (Fla. App. 1A).

Petitioner has also conducted an insurance business in Cuba for many years.

In 1938, Petitioner received an application for a life insurance policy to be issued on the life of German Lopez Sanchez, a Cuban National. The application for the policy of life insurance was accepted by the Petitioner at its home office at Toronto, Canada, on May 4, 1938.

(Fla. App. 24.) The decision to go on the risk was made in Toronto. (Appendix to this brief A1; further references to the appendix to this brief will be made by use of the symbol "BR. App." with appropriate page number.)

This contract made in Canada by this Canadian insuror insured the life of Mr. Sanchez in the sum of $10,000 for the benefit of his wife and children. The Respondents here are the heirs of Mr. Sanchez, who are entitled to claim under the policy.

From 1938 to 1958, the premiums on the policy in the amount of $741.50 per year were paid in United States dollars or currency having equivalent value (BR. App. A2). After payment of these premiums in a total amount of $14,830 from 1938 to 1958, the policy had a cash surrender value of $5,990 (Fla. App. 44) (the cash value represents interest at 4% on the premium payments over the 20 years).

In 1958, the Cuban currency became essentially worthless (BR. App. A2). If, however, Mr. Sanchez had made no payments at all from 1958 to his death on June 8, 1962, his cash value would have more than covered the premiums under the policy.

The policy itself provides in pertinent part:

> "*Places of Interest*—All amounts payable or receivable under this policy shall be paid at the chief office of the association in the City of Havana, Republic Cuba, but the insured may, with the consent of the association, make payment elsewhere.
>
> *Currency*—All amounts payable or receivable under the policy shall be paid in lawful currency of the United States of America."

Respondents, Mr. Sanchez' heirs, had fled from Cuba to avoid the communist takeover with the exception of one Rosalia Lopez Orue and she has assigned her rights to Respondents resident in the United States and affirmatively wants them to take her share. The record is unrebutted that if Petitioners return to Cuba, they will not be allowed to leave (BR. App. A3).

The Petitioners' real concern in this case is demonstrated by the final paragraph of the Supplemental Petition for Rehearing filed by the Petitioners here in the Florida Supreme Court which says:

"It is established in the record that, on the date of Petitioners [Respondents here—ed.] demand, viz. October 31, 1962, the peso had a value of $0.15 in Miami, Florida. The effect of the Judgment of the trial court, which disregards the depreciation value of the peso in the United States dollars in Miami on the date of demand, is an unlawful enlargment of Respondents' obligation under the policy."

In brief, having collected the premium in money for 20 years, and having contracted to pay the benefits of the policy in lawful money of the United States, the Petitioners here now, at the moment of payment, will be happy to make payment anywhere as long as they pay only 15% of the face value of the policy. That is what this lawsuit is all about.

REASONS FOR DENYING THE WRIT

1) Florida Was Entitled to Choose Canadian As Opposed to Cuban Law.

In *Imperial Life Assurance Co. of Canada* v. *Colmenares,* 1967 Canada Law Reports (Sup. Ct.) 447, the Supreme Court of Canada considered a situation four square with the one at Bar. In that case, Colmenares, a Cuban National, made application for a life insurance policy to Imperial, a Canadian insuror who headquarters in Toronto.

The decision to go on the risk was made in Toronto. The policy was prepared in Toronto. The Supreme Court of Canada decided that the contract was made in Toronto when Imperial accepted the offer contained in the application and made out the policy and mailed it in Toronto. The Court further held that the law of Ontario governed the contract. A Judgment in dollars to the Claimant was affirmed.

Clearly, in the case at Bar, if the Petitioner had been sued at its home office, the *Colmenares* case would control and a recovery in dollars would be allowed.

The Opinion of the Florida Supreme Court in its decisional aspect provides that:

> "The decision of the District Court is quashed and the cause is remanded with instructions to reinstate the Order of the trial court."

The Order of the trial court thus reinstated provides in pertinent part:

> "Assuming that the argument made by the Defendant that the *lex loci contractus* governs is valid, the result would be the same. The Court finds that the place of making of the contract was Toronto, Canada, and that the *lex loci contractus* is Canadian law which would govern this Defendant (which is a Canadian corporation having its principal place of business in Toronto). The Supreme Court of Canada in the case of *Imperial Life Assurance Co. of Canada* v. *Segundo Casteleiro Y Colmenares,* copy of which Opinion is filed in this cause, specifically held that the Canadian law governs a factual situation virtually on all fours with the situation in this case and thus the Cuban law urged by the Defendant does not govern the case at bar."

Assuming for the purpose of this argument that under Cuban law the contract at Bar would be held to be a Cuban contract, it is equally apparent that under Canadian law the contract at Bar would be held to be a Canadian contract. In this situation, assuming that Petitioners' contention is correct as to the *lex loci contractus* applying, the Florida Supreme Court is confronted with a choice between the law of Canada and the law of Cuba. Florida chose the law

of Canada. Petitioner is here complaining because of that choice.

This Court said in *Klaxon Co.* v. *Stentor Electric Manufacturing Co., Inc.*, 313 U.S. 487, 61 S. Ct. 1020, 85 L. Ed. 1477 (1941):

> "Subject only to review by this Court on any Federal question, Delaware is free to determine whether a given matter is to be governed by the law of the forum or by some other law (citation omitted). This Court's views are not the decisive factor in determining the applicable conflict rule (citation omitted)."

It is submitted that Petitioner, a Canadian corporation, cannot complain because the Florida Court applied the law of its domicile to it. What Petitioner is really saying is that the Florida Court has no right to make a choice between Canadian and Cuban law because Cuban law gives Petitioner a better financial break.

Petitioner's argument is that local law cannot be applied to this contract because of a lack of contact with Florida. However, Florida did not apply its local law, it applied the law of Canada which has ample contact with the contract.

2) Florida Can Procedurally Require This Canadian Insuror to Pay in Lawful Money of the United States When It Has Contracted to Pay in Lawful Money of the United States.

In *Confederation Life Assoc.* v. *Vega*, 207 So.2d 33, affirmed 211 So.2d 169, Cert. denied 393 U.S. 980 (1968), Florida held:

> "Applying the maxim that equity looks at the substance rather than the form of the transaction and since the primary purpose of this transaction is the payment of the cash surrender value of the policy after

a period of twenty years, and the provision of payment being made in Havana is merely for the convenience of the parties, there is no equitable reason why the plaintiff should not recover."

In the instant case, the principle is precisely the same. The monetary laws of Cuba, as the Florida Courts noted in *Vega*, have no application *per se* to this matter since Cuba's withdrawal from the international monetary fund. There is no question of treaty obligation to be considered here. Confederation contracted to pay in lawful money of the United States. There is no procedural reason why Florida cannot compel payment of lawful money in the United States. This Court will, we presume, not interfere with Florida decisions as to its own procedure.

CONCLUSION

The Petitioner's cleverly constructed argument and its hullabaloo about violations of international law by the Florida Courts are simply not sustainable on the record. What Florida decided was simply that as between Canadian and Cuban law, Canadian law is the *lex loci contractus*. Under that law, recovery by the Respondents is required. Procedurally, there is no bar to the recovery. Under Florida equitable principles, a meaningful recovery was to be allowed.

Florida did not apply its own local law to rape this defenseless insuror. It applied the law of Canada, the insuror's home State. It was clearly entitled to do so. It was clearly entitled to determine its own procedure. What the

law is in New York, or for that matter anywhere else is not material to this case.

The Petition for Certiorari should be denied.

Respectfully submitted,

SHALLE STEPHEN FINE and
JUAN ACOSTA
Attorneys for Respondents
1237 City National Bank Building
Miami, Florida 33130

By: .....
SHALLE STEPHEN FINE

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed first class, postage prepaid, air mail to John G. Laylin, William H. Allen and Michael Boudin, Esqs., attorneys for Petitioner, 888 Sixteenth Street, N. W., Washington, D.C. 20006, and regular mail to Thomas H. Anderson and Phillip Newcomm, Esqs., 1000 First National Bank Building, Miami Florida, 33131, this 13th day of June, 1972.

.....
SHALLE STEPHEN FINE

EXTRACT FROM TESTIMONY OF S. M. FARWELL, COUNSEL TO CONFEDERATION LIFE ASSOCIATION, TAKEN IN THE TRIAL OF THE CAUSE

Q. Then the names and the various things were typed into the policy?

A. Yes. It is a printed form with blanks, and they are completed by typing.

Q. Where was that done?

A. That was done in our head office in Toronto.

Q. Was the application forwarded up to Toronto?

A. From our Cuban branch.

Q. From the Cuban branch?

A. Yes.

Q. The policy reflects on the first page that it was signed, countersigned, Toronto; is that correct?

A. Yes. It doesn't say signed. It says - - -

Q. Legalized. Excuse me.

A. Yes.

Q. In fact, let's read it: "In Witness Whereof, these presents have been authorized with the official seal of the Association and duly legalized and countersigned at Toronto, Canada, this fourth day of May, 1938."

A. That is correct.

Q. That was done after the application had been reviewed in Toronto?

A. Yes.

Q. And a decision had been made to issue the policy?

A. Yes.

Q. In Toronto.

A. Well, not to issue the policy in Toronto. The decision was made in Toronto.

Q. To do what?

A. To accept the offer, this man's offer to enter into a contract contained in his application.

Q. The risk was made in Toronto?

EXTRACT OF THE TESTIMONY OF CLARENCE K. GRANT, MANAGER OF PERERA CO., DEALERS IN FOREIGN EXCHANGE, TAKEN IN THE CAUSE

BY MR. FINE:

Q. Mr. Grant, the decline in the value of the Cuban peso, as I understand it, began around 1959.

A. I would say gradually, yes. Ever since January 1, 1959, it was declining.

Q. Prior to that date what was the value, say, in December, 1958?

A. By December of 1958 there was already a rush, but if you take the - - - First of all, the legal value of the Cuban peso had been 98 cents because there was a two-percent exchange tax in Cuba, which made it automatically two cents cheaper; and, as a convenience, we were to buy it over the counter at 95 cents.

Q. That had been pretty well constant for a while, had it?

A. It was very, very constant.

Q. For many years?

A. Yes.

Q. Until Castro got there.

A. That's right.

Q. In other words, dollars and pesos, subject to the tax and your markup that you make as a currency broker, were just about even, subject to the tax and your currency markup, 95 cents and a dollar.

A. We used to buy it at 95 cents. Yes, sir.

EXTRACT OF THE TESTIMONY OF CARMEN de LARA ACOSTA

Q. How was Rosalia Lopez Orue related?

A. She was the only daughter that has survived.

Q. Other than Rosalia, all the rest have come to the United States?

A. Right.

Q. In the event you return to Cuba, will you be able to leave?

A. No. I don't think I could even go to Cuba.

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1487

CONFEDERATION LIFE INSURANCE COMPANY,
Petitioner,

vs.

HECTOR de LARA, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF FLORIDA

MEMORANDUM IN REPLY TO MEMORANDUM TRANSMITTING NOTE FROM THE CANADIAN AMBASSADOR

Respondents, in brief reply to the note from the Ambassador of Canada to the Secretary of State, dated May 15, 1972, transmitted by the Solicitor General of the United States, point out that this unusual attempt to pressure this Court into a review of this case overlooks the fact that the Canadian Government has, through its Supreme Court, reached the same conclusion reached by the Florida Courts. As Respondents point out in their reply brief, if suit had been brought at the home office of the Petitioner, Confederation Life Insurance Company, the result would have been precisely the same under the decision of the Canadian Supreme Court in *Imperial Life Assurance Company of Canada* v. *Colmenares*, 1967 Canada Law Reports (Sup.

Ct.) 447. Presumably, that is the reason that the Government of Canada has determined in its memorandum not to seek leave to intervene and to defend its position in this Court.

Petitioner respectfully suggests that the concern of the Government of Canada cannot influence this Court's decision to review this case when the Government of Canada is bound by the precise rule with which it here expresses concern.

Respectfully submitted,

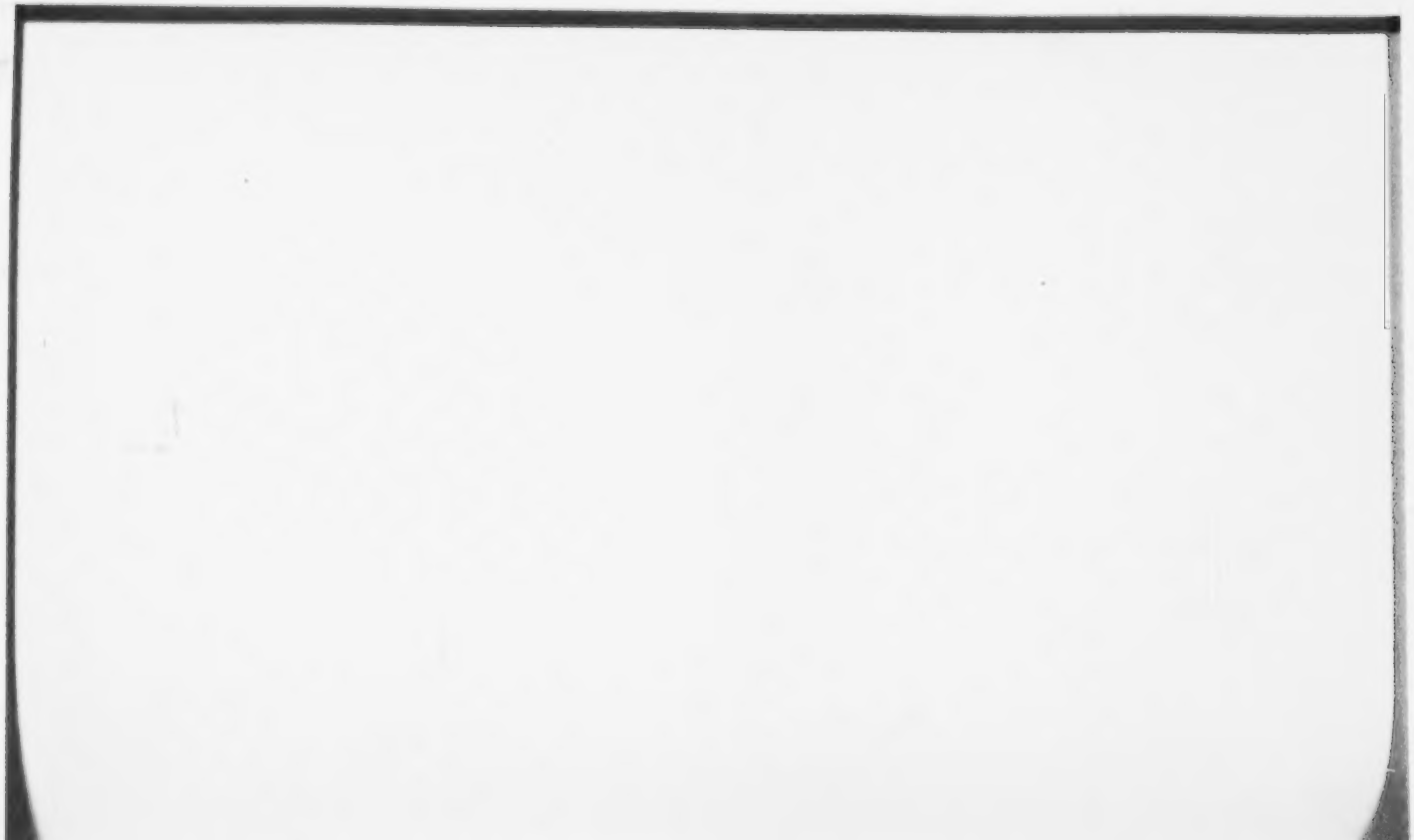
SHALLE STEPHEN FINE and
JUAN ACOSTA
Attorneys for Respondents
1237 City National Bank Building
Miami, Florida 33130

By: .....
SHALLE STEPHEN FINE

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed first class, postage prepaid, air mail, to John G. Laylin, William H. Allen and Michael Boudin, Esqs., attorneys for Petitioner, 888 Sixteenth Street, N. W., Washington, D.C. 20006, and regular mail to Thomas H. Anderson and Phillip Newcomm, Esqs., 1000 First National Bank Building, Miami, Florida, 33131, and to Honorable Erwin N. Griswold, Solicitor General of the United States, Department of Justice, Washington, D.C. 20530 and to M. Cadieux, Ambassador of Canada, 700 Sixth Street, N. W., Washington, D.C. 20001, this 20th day of June, 1972.

.....
SHALLE STEPHEN FINE



No. 71-1487

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

CONFEDERATION LIFE INSURANCE COMPANY,
Petitioner,

v.

HECTOR DE LARA, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

---

REPLY BRIEF FOR PETITIONER

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September 1972

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IN THE

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OCTOBER TERM, 1972

No. 71-1487

CONFEDERATION LIFE INSURANCE COMPANY,
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Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

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REPLY BRIEF FOR PETITIONER

In the light of respondents' brief in opposition, it is abundantly clear that certiorari should be granted. Respondents have not sought to distinguish but have simply ignored the two principal decisions of this Court discussed in the petition that impose governing rules of federal law squarely inconsistent with the decision below.[1] Nor have respondents denied that this case is of great practical and precedential importance and

[1] *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398 (1964); *Home Ins. Co.* v. *Dick*, 281 U.S. 397 (1930). See Pet. 13-14, 20-24.

will, unless reviewed, result in millions of dollars in losses for petitioner and other Canadian insurance companies similarly situated. See Pet. 15-16; pp. 3-5, *infra*. Instead, in urging that the judgment below not be reviewed, respondents have tried to sustain the decision of the Florida Supreme Court on a ground never mentioned by that court and impossible to justify on the existing record.

Respondents seek to create the impression that the Florida Supreme Court, in accordance with local choice of law rules, routinely applied Canadian law to determine obligations of a Canadian insurer. This conception of the case bears no relationship to reality. The Florida Supreme Court applied the substantive law of *Florida* to a transaction with which Florida had no connection; Canadian law was not even mentioned by the Florida Supreme Court; and the transaction is a *Cuban* one directly affected by Cuban acts of state that the Florida courts have sought to disregard. See pp. 5-8, *infra*

Respondents assert that the petition contains a "cleverly constructed argument and . . . hullabaloo about violations of international law . . . ." Resp. Br. 7. The action of the Florida courts does involve a violation of international law and thereby establishes a precedent with serious implications for American companies doing business abroad, but that issue is only one of three federal questions presented. The drastic alteration by the court below of rights and obligations of the parties growing out of a wholly foreign transaction also conflicts with a settled line of decisions in this Court construing the Due Process Clause. See Pet. 11-16. Finally, the lower court's disregard of applicable Cuban acts of state dating back to 1951,

well before the Castro regime came to power, violates this Court's act of state doctrine. See Pet. 20-23; pp. 9-10, *infra*.

1. Several events since the filing of the petition confirm and reinforce the reasons previously given why plenary review by this Court of the substantial federal questions just mentioned is appropriate. The lower courts have continued to decide cases involving Cuban insurance policies issued by foreign insurers and have continued to differ radically in their conclusions.[2] Confederation alone is currently involved in about 14 such cases in the state and federal courts in Florida as well as additional cases in other jurisdictions. Potentially a vast number of similar cases involving Confederation may reasonably be expected to arise in the American courts. See Pet. 16. Other Canadian life insurance companies face comparable litigation.

Repeated, time-consuming litigation revolving around the same fundamental questions is not a fruitful use of legal resources. Yet unless and until this Court speaks, lower state and federal courts will continue to reach irreconcilable results despite the presence of controlling federal questions. It has, of course, been a traditional office of this Court to ensure that recurring federal questions are decided in the same way. Sup.

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[2] In *Arida Conte* v. *Confederation Life Ass'n*, No. 41,888, Fla. Sup. Ct., decided July 19, 1972, the Florida Supreme Court followed the decision below in awarding a judgment in dollars for the apparent face value of a Cuban endowment policy. Another recent example is *Santovenia* v. *Confederation Life Ass'n*, No. 71-2928, 5th Cir., decided May 31, 1972. There, on the particular facts the Court of Appeals for the Fifth Circuit affirmed a denial of recovery and distinguished the decision sought to be reviewed in the present case.

Ct. R. 19. This role is even more important where, as here, the same questions are being presented in a wide variety of state and federal forums.

A further development is the submission by the Canadian Government of a note, transmitted to this Court through the State Department and the Solicitor General, urging plenary consideration of the issues. The Canadian Government's legitimate interest rests upon the fact that 10 major Canadian life insurance companies may be adversely affected by the decision below and their foreign insurance policies exceed $1 billion in cash surrender value. As the Canadian note observes, the approach taken by the Florida Supreme Court not only would help foreign policyholders to evade their own countries' foreign exchange regulations but would threaten the insurers with depletion of their dollar reserves by requiring them to pay in dollars claims for which reserves are normally maintained locally and in local currency.

This Court has previously given due consideration to the position of foreign governments in deciding whether substantial federal questions raised by petitions for certiorari warranted plenary consideration. For example, in *Lauritzen* v. *Larsen,* 345 U.S. 571 (1953), the Danish and Norwegian Governments, among others, supported requests for plenary review which this Court granted. See 344 U.S. at 810. Certainly the submission by the Canadian Government establishes that the consequences of the lower court's approach are not limited to the petitioner alone but threaten to have a severe adverse effect throughout the entire Canadian insurance industry.

Finally, this Court's recent decision in *M/S Bremen* v. *Zapata Off-Shore Co.,* 40 U.S.L. Wk. 4672 (June 12,

1972), confirms that it is also important to consider the implications of this case for American businesses operating abroad. In that decision, following the tradition of the *Lauritzen* case (see p. 4, *supra,* and Pet. 19-20), this Court stated that American foreign commerce would not be assisted by a "parochial concept that all disputes must be resolved under our laws and in our courts." 40 U.S.L. Wk. at 4674. If the Florida courts are allowed to apply their own substantive rules of law to govern transactions not connected with Florida in any significant way, American companies will not be in a position to complain when foreign governments disregard fundamental considerations of fairness and jurisdiction to rewrite contracts made in this country.

2. In opposing the grant of certiorari, respondents' answering brief does not take direct issue with the authorities cited in the petition to show that Florida may not apply its own substantive law to a transaction with which it has no substantial contact. Nor do respondents deny that the case has great precedential importance.[3] Rather, respondents adopt the position that there is no legal infirmity because, they assert, Florida applied Canadian law to the transaction and Canadian courts would allow recovery against the insurer in similar circumstances. Respondents are incorrect on both points.

The Florida Supreme Court, whose judgment is sought to be reviewed, did not in any way rely on

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[3] Respondents originally brought this action as a class action, asserting that the questions involved affect a class which "is so numerous that a joinder of all member parties is impracticable" (A. 4-5). For other reasons the trial court did not permit the case to proceed as a class action, but its precedential significance is obvious.

Canadian law or even refer to any Canadian statute or decision. That court described the insurance policy here involved as one "applied for, and delivered, in Cuba" (Pet. 8a) and it had previously described a Confederation policy made in exactly the same way as this one as "covered by Cuban law." *Confederation Life Ass'n* v. *Ugalde,* 164 So.2d 1, 2 (Fla. 1964), *cert. denied,* 379 U.S. 915 (1965).

The express basis of the lower court's decision was that "the instant situation" falls "within the ambit of the rationale of Confederation Life Association v. Vega, supra." Pet. 10a. In *Vega,* the Florida court applied *Florida* law to determine Confederation's obligations with respect to the cash surrender option of one of its Cuban policies where that option was exercised in Florida.[4] Having established a purported basis for applying Florida law that is not available here (see n.4, *supra*), the *Vega* court allowed recovery on "equitable principles" employed by the Florida chancellor. 207 So.2d at 38. In the present case, the Florida Supreme Court's reliance on *Vega,* however illogical, obviously means that it was applying Florida law, not Canadian law.

Respondents base their claim that Canadian law was applied upon the trial court's opinion which, as

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[4] See *Confederation Life Ass'n* v. *Vega,* 207 So.2d 33 (Fla. Dist. Ct. App.), *aff'd,* 211 So.2d 169 (Fla.), *cert. denied,* 393 U.S. 980 (1968). The intermediate Florida court, whose opinion was adopted by the Florida Supreme Court, justified the application of Florida law on the ground that the exercise of the cash surrender option was "the last act necessary to complete the contract, and it was performed in Florida." 207 So.2d at 37. In the present case, there is no cash surrender option involved, and the principle of *lex loci contractus,* which the *Vega* court used to invoke Florida law, here requires the application of Cuban law.

an alternative to *Vega,* asserted that the contract here involved was made in Canada. Resp. Br. 5. It is sufficient answer that that court's alternative assertion was never adopted by the Florida Supreme Court—and for good reason since Confederation's Cuban insurance contracts were in fact made in Cuba. In any event, the judgment of the Florida Supreme Court must stand or fall on the only ground advanced for it, *i.e.,* the application of Florida law to the claim here involved. It bears repeating, however, that the alternative assertion of the trial court appears in an opinion prepared by the respondents' counsel and, being without any basis in the record, could not insulate the federal errors from review in any event. See Pet. 4, n.3.

Since the Florida Supreme Court did not rest on Canadian law, the question what a Canadian court might do in comparable circumstances is not directly relevant, but respondents also err in suggesting that this case would be governed in a Canadian court by *Imperial Life Assurance Co. of Canada* v. *Colmenares,* [1967] Can. L. Rep. 443 (Sup. Ct.). There the Canadian court found that another Canadian insurance company's contract insuring the life of a Cuban resident had been made *in Canada* because the Cuban resident had submitted an application to the Canadian company which committed him irrevocably to accept the policy when issued. *Id.* at 445-47. The court thus deemed the insurance contract to be completed when the irrevocable offer was accepted by the mailing of the policy from the company's home office in Canada. See *id.* at 447. In the present case, Confederation's own application form contains no such irrevocable acceptance clause. No contract of insurance existed until the Confederation policy was delivered to the insured in Havana, until it was notarized according to Cuban

law, and until payment of the first premium was made in Havana. See Pet. 4; A.36.[5]

Even more important, in *Colmenares* the policy involved, unlike the policy in this case, did not specify Cuba as the place of payment. On the contrary, it provided that payment could be made anywhere and that all payments should be made "by bank draft drawn on New York." P. 1a, *infra*. In this case the Confederation policy specifies that all payments are to be made in Havana (A. 29). This circumstance, quite apart from other Cuban contacts, suffices to make the transaction subject to Cuban currency laws, which require the payment of debts payable in Cuba to be made solely in pesos. See Pet. 4-6.

In short, the only ground advanced by respondents for denying the petition for certiorari is irrelevant to this case. It rests on the demonstrably mistaken premises that the Florida Supreme Court applied Canadian law in this case and that under Canadian law respondents could recover in dollars outside Cuba on a Cuban policy explicitly payable in Cuba and required by Cuban law to be paid in pesos. The Florida Supreme Court did not even hint at the applicability of Canadian law and certainly did not purport to adopt respondents' construction of it. This is not surprising in the light of the substantial differences between this case and *Colmenares,* which is the only source of Canadian law that respondents can point to as advancing their claim that they are entitled to recover in dollars outside Cuba.

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[5] The relevant clauses in the application and policy involved in the *Colmenares* case are reproduced in the Appendix to this reply. Comparison of the application and policy involved in this case, which are reproduced at A. 23-44, readily demonstrates the pertinent differences between the two policies.

3. Since the petition for certiorari was filed, this Court has once again reaffirmed the act of state doctrine in *First Nat'l City Bank* v. *Banco Nacional de Cuba,* 40 U.S.L. Wk. 4652 (June 7, 1972). This doctrine, which the court below contravened by ignoring the effect of Cuban currency regulations on obligations payable in Cuba, is of special importance here in the light of respondents' attempt to invoke Canadian law. For, even if a Canadian court would disregard Cuban currency regulations in adjudicating a debt expressly payable in Cuba—and there is no showing that it would—this would not entitle an American court to do so in violation of the act of state doctrine, which applies to state and federal courts alike.

As the petition established, the insurance policy here involved represented an obligation contracted with a Cuban citizen, by the Cuban office of Confederation, to pay money in Cuba. Pet. 4-5. Long before the Castro revolution, the Cuban Government enacted currency regulations depriving the United States dollar, in which the contract was originally expressed, of its status as legal tender in Cuba. Certainly it was within Cuba's authority to enact currency regulations that, as applied to Confederation's policies, "in effect changed the contract from a dollar contract to a peso contract." *Johansen* v. *Confederation Life Ass'n,* 312 F. Supp. 1056, 1063 (S.D.N.Y. 1970), *aff'd,* 447 F.2d 175 (2d Cir. 1971). The United States has enacted comparable legislation—*e.g.,* the Gold Clause Resolution of 1933, 48 Stat. 112, which converted gold debts into dollar debts—and measures of this kind are recognized as conventional acts of state.[6]

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[6] See *French* v. *Banco Nacional de Cuba,* 23 N.Y.2d 46, 242 N.E.2d 704 (1968); *Restatement (Second), Foreign Relations Law of the United States* § 41 & comment d (1965).

Under the act of state doctrine as articulated by this Court on a number of occasions, Florida could not enforce Confederation's Cuban contractual obligations while ignoring the definition and limitation of those obligations by the Cuban act of state. Whatever a Canadian court might do in such a case, the act of state doctrine requires that American courts must accept such a foreign act of state "as a rule for their decision." *Banco Nacional de Cuba* v. *Sabbatino,* 376 U.S. 398, 418 (1964), quoting *Ricaud* v. *American Metal Co.,* 246 U.S. 304, 309 (1918). Demonstrably, the Florida courts did not accept but rather ignored or rejected the Cuban act of state relevant to the present transaction.[7]

None of the recognized exceptions to the act of state doctrine have any bearing on this case. The State Department has not filed a "Bernstein" suggestion, no counterclaim is involved, and the Hickenlooper Amendment does not apply for several reasons, most importantly because the Cuban act of state is not even arguably in violation of international law. See Pet. 23, n.16. The operation of Cuba's currency regulations upon an obligation made in Cuba, with a Cuban citizen, and payable in Cuba is as legitimate and familiar an act of state as America's gold clause legislation previously cited.

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[7] Respondents' assertion that Cuba is not a member of the International Monetary Fund and that the United States is not obliged by treaty to respect Cuban law is wholly irrelevant, since the act of state doctrine does not depend on commitments by the United States to international organizations or specific countries.

CONCLUSION

For the reasons stated the petition for certiorari should be granted.

Respectfully submitted,

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APPENDIX

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Extract from translated insurance application form involved in *Imperial Life Assurance Co. of Canada* v. *Colmenares,* [1967] Can. L. Rep. 443 (Sup. Ct.):

> "I, the Applicant, agree as follows: (1) That in consideration of the expense incurred hereunder by the Company I will accept the policy applied for, if issued, and pay the first premium thereon; . . . ."

Extract from translated insurance policy form involved in *Imperial Life Assurance Co. of Canada* v. *Colmenares, supra:*

> "PAYMENTS
>
> "The premiums hereunder are payable at any office of the Company or to any duly authorized agent producing the Company's printed official receipt therefor, signed by at least one of the executive officers and countersigned by such agent. No person has authority to receive renewal premiums after the expiry of the grace period provided in this policy.
>
> "All payments under this policy whether to or by the Company shall be made by bank draft drawn on New York payable in lawful currency of the United States of America."